

CHAPTER 1.0

INTRODUCTION

1.1 OVERVIEW

As discussed in more detail below and in the Draft SEIS, in Mid States Coalition for Progress v. STB, 345 F.3d 520 (8th Cir. 2003) (Mid States),¹ the court vacated and partially remanded the Board's decision in the Powder River Basin Expansion Project rail construction case. This Final Supplemental Environmental Impact Statement (Final SEIS) addresses the 45 comments² SEA has received on the Draft SEIS addressing the four environmental issues remanded by the court and some other issues. The Final SEIS was prepared by the Surface Transportation Board's (Board or STB) Section of Environmental Analysis (SEA), in conjunction with five federal cooperating agencies including the United States Department of Agriculture's Forest Service (USFS), the United States Department of Interior's Bureaus of Land Management (BLM) and Reclamation (Reclamation), the United States Army Corps of Engineers (COE), and the Coast Guard. Further references to the work of SEA and the Board in this document encompass the efforts of the cooperating agencies.

This Final SEIS completes the environmental review for this project. The Board will now issue a final decision assessing the results of the supplemental environmental analysis and the cost of any necessary additional mitigation to address those impacts. Then the Board will re-weigh the merits of the underlying proposal, to reflect those impacts and costs and impose any appropriate additional mitigation conditions, if it decides to again approve this rail construction project. No project-related construction may begin until the Board's final decision has been issued and has become effective.

¹ Copy attached in Draft SEIS, Appendix A.

² All comments received on the Draft SEIS and SEA's responses to them are included in Appendix A of this Final EIS.

1.2 BACKGROUND

1.2.1 The Board Proceeding

In February 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) sought authority from the Board³ under 49 U.S.C. 10901⁴ to construct and operate an approximately 280-mile rail line extension to reach certain coal mines in Wyoming's Powder River Basin (PRB). The proposed line would allow DM&E to become the third rail carrier to transport low-sulfur coal from the PRB and in so doing generate the funds needed to completely upgrade DM&E's existing 598-mile rail system in South Dakota and Minnesota. In December 1998, the Board issued a decision addressing the transportation-related aspects of DM&E's proposal (1998 Decision).⁵ In it, the Board found that the new line, if built, would provide transportation benefits by enabling DM&E to compete with the Union Pacific Railroad Company (UP) and the BNSF Railway Company (BNSF) in the PRB.

Then, to comply with the National Environmental Policy Act, 42 U.S.C. 4321 et seq. (NEPA) and other relevant environmental laws and regulations,⁶ SEA prepared a thorough and comprehensive

³ The Board is a decisionally independent adjudicatory body, organizationally housed within the U.S. Department of Transportation. The Board has jurisdiction over certain transportation matters, including those related to the construction of new rail lines, rail mergers, the abandonment of rail service, and railroad rates.

⁴ Under 49 U.S.C. 10901, the Board has exclusive licensing authority for the construction and operation of rail lines. In enacting the ICC Termination Act of 1995, Congress intended to facilitate rail construction. Congress did so by changing the statutory standard from requiring approval if the agency finds that a project is consistent with the public convenience and necessity to requiring approval unless the Board finds that such activities are inconsistent with the public convenience and necessity.

In reviewing rail construction proposals, the Board's well settled practice is to examine whether there is a public demand or need for the proposed new service, whether the proposal is in the public interest and will not unduly harm existing services, and whether the applicant is financially able to undertake the construction and provide service. The Board can either (1) approve the transaction as proposed, without conditions, (2) approve the transaction with conditions to offset or reduce the potential impacts, including environmental impacts or (3) disapprove the transaction entirely.

⁵ Copy attached in Draft SEIS, Appendix B.

⁶ NEPA requires federal agencies to examine the environmental effects of proposed federal actions, such as

Environmental Impact Statement (EIS)⁷—which is available in its entirety on the Board’s website at www.stb.dot.gov and which SEA incorporates here by reference—as part of an environmental review process that took nearly 4 years to complete. The EIS was prepared in conjunction with the five Federal cooperating agencies, and in consultation with a number of other agencies, including the U.S. Environmental Protection Agency (EPA). SEA does not intend to revisit or reconsider the comprehensive environmental analyses amassed in the EIS. The limited purpose of this SEIS is to supplement the EIS with additional environmental analysis consistent with the decision of the court in Mid States.

As discussed in more detail in the EIS and the Draft SEIS, throughout the environmental review process, SEA sought input from agencies, Native American Tribes, elected officials, organizations, businesses, communities, farmers, ranchers, and other members of the public. SEA also undertook extensive public outreach activities to give interested parties, agencies, Native American Tribes, and the general public the opportunity to learn about the project, define issues, and actively participate in the environmental review process. An approximately 5,000-page Draft EIS was issued for public review and comment in September 2000. An approximately 2,500-page Final EIS, issued in November 2001, contained further analysis in response to the roughly 8,600 written comments received. In addition to

proposals to construct a new rail line. NEPA prescribes the process that must be followed but does not mandate particular results. Department of Transportation v. Public Citizen, 124 S.Ct. 2204, 2209 (2004). Once the adverse environmental effects have been adequately identified and evaluated, the agency may conclude that other values outweigh the environmental cost. City of Auburn v. United States, 154 F.3d 1025, 1032-33 (9th Cir. 1988).

Regulations governing how NEPA is implemented have been promulgated by the President’s Council on Environmental Quality (CEQ) at 40 CFR 1500-1508, and by the Board, at 49 CFR 1105.

⁷ An EIS is the detailed written statement required by NEPA for “major federal actions significantly affecting the quality of the human environment,” 42 U.S.C. 4332(2)(C). See 40 CFR 1508.11 (CEQ rule) and 49 CFR 1105.4(f) (STB rule).

accepting written comments on the Draft EIS, SEA hosted 12 public meetings that were attended by more than 1,700 persons.

The issues analyzed in the EIS included the impacts—both beneficial and adverse—of the railroad's proposal on human and natural resources, including safety, transportation, geology, soils, land use, paleontological resources, water resources, wetlands, air quality, noise, vibration, vegetation, wildlife, Federally listed threatened and endangered species, cultural resources, aesthetics, socioeconomics, and minority and low income populations. The in-depth environmental review included environmental studies and analyses such as biological surveys; cultural resource investigations of archaeological sites and historic resources; and the compilation of data and study of potential effects on safety (including grade-crossing safety and potential traffic delays); wildlife migration; geological resources and soils; and potential impacts to Native American Tribes, ranches, farms, and communities. The environmental analysis looked not only at the environmental impacts of the new construction (which required Board approval under 49 U.S.C. 10901) but also looked at the “downstream” environmental impacts of upgrading and running more trains over DM&E's existing lines in Minnesota and South Dakota—activities that do not require Board approval.⁸

In January 2002, the Board issued a decision (2002 Decision)⁹ approving the proposed line, as shown in Figure 1-1 below. Based on the environmental information in the EIS, the Board concluded that DM&E's proposal would result in some potentially significant adverse environmental impacts, but that with SEA's recommended environmental conditions, the impacts would not be severe enough to

⁸ See Lee's Summit, Mo. v. STB, 231 F.3d 39, 42-43 n.3 (D.C. Cir. 2000) (railroads have the right to improve their existing lines without needing to obtain Board approval, and thus without an environmental review under NEPA).

⁹ Copy attached in Draft SEIS, Appendix C.



75 0 75
Miles

LEGEND

— Existing Rail Line

- - - Proposed New Construction

State Lines

County Lines

• Cities

Figure 1-1
PROPOSED POWDER RIVER BASIN
EXPANSION PROJECT

warrant disapproving the proposed new line in view of the line's significant transportation and public benefits: (1) the introduction of a competitive route from the PRB that would be as much as 390 miles shorter than the other carriers' routes to the areas served by DM&E and (2) the attendant upgrade of DM&E's existing system, enabling improved service to DM&E's existing customers. Accordingly, the Board granted its approval for DM&E's proposal, subject to extensive environmental conditions (147 conditions in all) addressing both short-term (construction-related) impacts, and impacts related to long-term operation of unit coal trains. The Executive Summary to this Final SEIS contains a complete list of the conditions imposed by the Board (including the changes to condition Number 29, that SEA is recommending, as discussed below in the Final SEIS).

As part of its required mitigation, the Board imposed conditions requiring two grade-separated crossings along the existing line in Rochester, Minnesota—the largest community on DM&E's route and the location of the Mayo Clinic—as well as extensive grade-crossing improvements in numerous locations. Noise mitigation for Rochester and other communities was imposed, as well as mitigation to address water quality, wetlands, fencing, the establishment of community and Tribal liaisons, and biological and cultural resource concerns. The Board also imposed a requirement that DM&E use the environmentally preferable routes, and provided for a formal environmental oversight period to allow it to monitor DM&E's progress in implementing the environmental conditions and resolve any unanticipated environmental problems that might arise during implementation of this major construction project.

Finally, in the course of the environmental review, DM&E submitted negotiated agreements that it had executed with 51 of the 56 affected communities on its existing lines, setting forth mutually satisfactory measures for addressing potential environmental impacts on those communities and other

local concerns. The Board imposed a condition requiring DM&E to comply with these voluntary agreements.

1.2.2 Cooperating Agency Proceedings

The Draft and Final SEISs were prepared by SEA, in cooperation with the USFS, BLM, COE, Reclamation, and Coast Guard. Under the requirements of NEPA, the Board is the lead agency for preparing the SEIS, and USFS, BLM, COE, Reclamation, and the Coast Guard are cooperating agencies. This Final SEIS has been prepared in compliance with NEPA and related environmental laws, Board regulations for implementing NEPA (49 CFR Part 1105), the guidance provided by the CEQ regulations implementing NEPA (40 CFR Part 1500), as well as USFS, BLM, COE, Reclamation, and Coast Guard policy, procedures, and guidance documents.

The Federal agencies' actions considered in this case will include decisions by the Board and each of the cooperating agencies. The cooperating agencies' decision-making authority, and the various applications, either submitted or to be submitted by DM&E to these agencies, was discussed in detail in the Final EIS.¹⁰

1.2.3 Proceedings in Court

On judicial review, various petitioners¹¹ representing a variety of interests challenged the Board's decision to approve the line on multiple grounds. Some argued that the Board should have disapproved the project as not financially viable. Others raised issues about the effect of the project on

¹⁰ See Final EIS, Executive Summary, pages E-15 to E-20.

¹¹ Petitioners included the Mid States Coalition for Progress; Minnesotans for an Energy-Efficient Economy; Michael LaPlant; the Oglala Sioux Tribe, *et. al.*; Sierra Club; the City of Rochester, Minnesota; Olmsted County, Minnesota; and the Mayo Foundation.

environmental and historic resources and Tribal interests. Some focused on the Board's consideration of alternatives and the technical analysis of noise and air quality in the EIS. There were also allegations that the Board had not adequately addressed potential increased coal consumption; public security issues; sidings; and "environmental justice" (minority and low-income populations).

In Mid States, the court vacated and partially remanded the 2002 Decision. The court upheld the Board's decision with respect to all of the transportation issues and most of the environmental issues that had been raised.¹² For example, the court specifically rejected challenges to the Board's methodology for assessing noise, the potential air quality impacts of the construction and operation of DM&E trains, environmental justice, sidings, and the traffic effects that would result from reconstruction of the existing line through Rochester. The court disagreed with claims that SEA failed to take a hard look at the possibility of groundwater contamination and the risk that the project would cause delays to emergency vehicles. Furthermore, it rejected the Oglala Sioux Tribe's argument that licensing of this rail line would violate the terms of Native American treaties or breach the government's fiduciary duty to the Sioux. The court also upheld the Board's rejection of the bypass proposed in Rochester as an alternative to DM&E's plans to rehabilitate its existing line in Rochester, and it was satisfied with the Board's consideration of alternatives for the proposed rail line extension.

But, notwithstanding its conclusion that "on the whole the Board did a highly commendable and professional job in evaluating an enormously complex proposal,"¹³ the court remanded the case for

¹² While the court was satisfied that "the Board had sufficient evidence before it to conclude that DM&E could complete this project," 345 F.3d at 552, it did caution the Board to take into account "additional costs, if any, that may arise from the environmental analyses that it will conduct on remand" and to "incorporate its new findings appropriately into the body of evidence that it has already amassed before making a final determination on this matter." Id.

¹³ 345 F. 3d at 556.

further Board review of four environmental issues. First, although the court specifically upheld the EIS's noise methodology (including development of a noise model, determination of noise contours for wayside, horn, and the combination of wayside and horn noise, the use of the 65 and 70-dBA L_{dn} noise levels for analysis, and the use of aerial photographs to count noise-sensitive receptors within the established noise contours),¹⁴ the court stated that the Board needed to do more to explain its decision that mitigation for increased horn noise as a result of this project was unwarranted.¹⁵ Second, although the EIS had included analyses for noise and vibration separately, the court directed the Board to address in more detail the City of Rochester's contention "that households experiencing both noise and vibration perceive the effect of the noise to be approximately twice the measured value of the noise."¹⁶

Third, the court directed the Board to examine the potential indirect air emission impacts of increased coal usage that might result from lower transportation rates as a result of this project.¹⁷ The EIS had acknowledged that the Clean Air Act's requirements would encourage many utilities to shift to western, low-sulfur coal that the new line would carry, but had reasoned that such a shift would occur with or without the new line, since two other carriers already transport low-sulfur coal out of Wyoming and the proposed project would merely provide a shorter and straighter route. The court found this reasoning unpersuasive.¹⁸ The court also rejected the argument that the potential air impacts of burning low-sulfur coal were too speculative and far removed from the Board's approval of construction and

¹⁴ Id. at 534-538.

¹⁵ Id. at 536.

¹⁶ Id. at 537.

¹⁷ Id. at 548-50.

¹⁸ Id. at 549.

operation of this rail line for the Board to be required to consider them in its NEPA analysis in this case.¹⁹ The court noted that the EIS scoping notice in this case had stated that the Board would “[e]valuate the potential air quality impacts associated with the increased availability and utilization of Powder River Basin coal.”²⁰ It also faulted the EIS for failure to address three computer simulation models identified by some commenters (PROSYM, PROMOD, and GE-MAPS) that allegedly could be used to forecast the effects of the DM&E project on the national consumption of coal.²¹

Finally, the court ruled that the Board’s authorization to construct this line had been premature under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, because the “Programmatic Agreement” addressing the analysis of cultural resources had not yet been executed.²² (That agreement has since been executed and is included in the Draft SEIS at Appendix D.) In closing, the court expressed its expectation that the Board could deal with the four remanded issues expeditiously.²³

In both size and scope, this project is undoubtedly one of the largest ever to have come before the Board. Although we find it necessary to vacate the Board’s final decision so that it may correct certain deficiencies, we think that on the whole the Board did a highly commendable and professional job in evaluating an enormously complex proposal. We are confident that on remand the Board will quickly address those few matters that we have identified as requiring a second look, and will come to a well informed and reasonable conclusion.

¹⁹ Id.

²⁰ Id. at 550.

²¹ Id.

²² Id. at 553-55.

²³ Id. at 556.

Petitions for rehearing of the court's decision were filed by the Board and various other parties. All of the petitions for rehearing were denied on January 30, 2004.

1.3 THE SUPPLEMENTAL EIS PROCESS

On March 3, 2004, the Board issued a notice that it had begun work on the four remanded environmental issues, consistent with the court's Mid States decision. Pursuant to the court's decision, SEA conducted an independent review of each of the remanded issues and presented its analysis and conclusions on each issue for public review in the Draft SEIS. SEA now responds to public comments on all aspects of the Draft SEIS and presents its final recommendations and conclusions in this Final SEIS.

1.3.1 Scoping

Following the issuance of the Board's notice, SEA received comments requesting that it initiate a scoping process for the SEIS. However, the CEQ regulations implementing NEPA do not require scoping for a supplement.²⁴ Moreover, the court's remand in this case was narrow, and the court expected that on remand the Board "will quickly address those few matters that we have identified as requiring a second look, and will come to a well informed and reasonable conclusion."²⁵ Thus, SEA decided that it would proceed on remand by preparing a Draft SEIS setting forth SEA's analysis and

²⁴ See 40 CFR 1502.9(c)(4) ("Agencies shall prepare, circulate, and file a supplement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council").

²⁵ 345 F.3d at 556.

conclusions on the four remanded issues, providing a comment period, and then issuing a Final SEIS responding to the comments on the Draft SEIS and presenting SEA's final recommendations and conclusions. The comment period on the Draft SEIS provided ample opportunity for public review and comment on all aspects of SEA's supplemental analysis, including the methods and assumptions that SEA used.

1.3.2 Contents and Organization of the Final SEIS

Chapter 2 of the Final SEIS discusses the remanded horn noise issue. It provides a summary of SEA's horn noise evaluation in the Draft SEIS, and discusses the 14 comments SEA received on the analysis and conclusions in the Draft SEIS. In particular, Chapter 2 discloses information about the Federal Railroad Administration's recent adoption of a Final Rule concerning horn soundings, which gives communities concerned with horn noise a process to establish quiet zones and fully considers whether, as some commenters request, specific mitigation for horn noise is warranted in this case.

Chapter 3 of the Final SEIS addresses the remanded issue of the combined impact, or synergies, between vibration and noise. Chapter 3 summarizes the results of SEA's additional analysis of the synergistic effects of noise and vibration presented in the Draft SEIS. The chapter explains that SEA received nine comments on the additional analysis, explains the nature of the issues raised and provides SEA's conclusions on this issue, including a final determination on whether, at the level anticipated from the proposed project, any increase in the annoyance from or perception of noise would occur, and whether to recommend that the Board impose any additional mitigation to address this issue.

Chapter 4 examines the potential indirect air quality impacts of increased coal usage that might result from lower transportation rates as a result of this project. Chapter 4 summarizes SEA's analysis presented in the Draft SEIS, including a discussion of existing computer simulation models that could be

used for this analysis. The chapter details SEA's model selection, the process used to develop inputs for the model to assess this remanded issue, and the results of the modeling that has been conducted showing that little additional coal would be consumed nationally or regionally from this project and that the information SEA would need to meaningfully measure air emissions on a local level is unavailable. Chapter 4 then summarizes the 13 comments SEA received on its additional air quality analysis and presents SEA's responses to these comments, as well as SEA's final recommendations on whether additional air quality mitigation beyond that previously imposed by the Board is appropriate.

Chapter 5 explains that the Board has met its obligations under the National Historic Preservation Act in this matter because, although a Programmatic Agreement governing the historic preservation process was not executed at the time of the issuance of the 2002 Decision, one is now in place. Chapter 5 summarizes and discusses the four comments received on the Programmatic Agreement.

Chapter 6 responds to issues raised by commenters that are outside the four issues remanded by the court, including the potential effect on this project of DM&E's recent acquisition of the former I&M Rail Link in the IMRL case.

Finally, Appendix A contains the 45 comments SEA received on the Draft SEIS and SEA's individual response to each of those comments.

1.4 SUMMARY OF CONCLUSIONS

In this SEIS, SEA has conducted additional analysis to address the four issues remanded by the court: horn noise mitigation; noise and vibration synergies; air emissions related to increased usage of PRB coal as a result of lower transportation rates that could result from this project; and the Programmatic Agreement. The Final EIS responds to comments on the assessment of these issues presented on the Draft SEIS and contains additional analysis and explanation as appropriate. Each of the remanded issues is discussed more fully in the applicable chapters of this Final SEIS, as noted above. The Final SEIS also responds to other issues raised by commenters as appropriate. The following provides a brief summary of SEA's final conclusions and recommendations on each of the remanded issues, and the other issues that are discussed.

1.4.1 Horn Noise

In the EIS, SEA determined that thousands of noise sensitive receptors could be exposed to adverse levels of noise due to train horn soundings. SEA recommended 11 mitigation measures to address potential noise impacts, including measures that will have the effect of reducing horn soundings to some extent (*i.e.*, grade crossing improvements and grade separated crossings in Rochester, Minnesota and Pierre, South Dakota). All of these mitigation conditions were imposed by the Board. Following its additional analysis for the Draft SEIS and this Final SEIS, SEA has decided to recommend that the Board modify its existing community liaison condition (Condition Number 29) to require that DM&E's community liaison(s) work with communities interested in a quiet zone on how to establish and fund one.²⁶ Consistent with past cases, however, SEA reaffirms its preliminary conclusion in the Draft SEIS that requiring additional mitigation for noise from horn soundings, including the

²⁶ All of the Board's noise mitigation, including condition Number 29 with SEA's recommended changes,

establishment of or funding for a quiet zone by the railroad, or mitigation such as insulation treatments at the noise receptor locations, or sound walls, would not be reasonable or warranted in this case. This decision is based on the following:

- Safety is of paramount importance to SEA and the Board.
- Train horn soundings are a safety issue regulated by FRA.
- FRA's Final Rule establishing train horn sounding regulations and procedures to establish quiet zones now provides all of the communities affected by this project the opportunity to eliminate or reduce train horn soundings without compromising safety.
- Imposing the cost of establishing a quiet zone on DM&E would not be appropriate because, under FRA's Final Rule, implementation of quiet zones and the installation and maintenance of supplementary safety measures (SSMs) and alternative safety measures (ASMs) necessary to establish quiet zones, including the funding of such measures, is the responsibility of the community.
- Help with funding for quiet zone improvements is available from a variety of federal, state, and local sources.
- The Board has never imposed mitigation for horn (as opposed to wayside) noise, so that doing so here would depart from the Board's consistent approach, in rail merger and construction cases, of only mitigating wayside noise.
- Neither Rochester nor Chester, Minnesota present circumstances so extraordinary as to warrant departing from the Board's consistent practice. Trains go through residential communities all around the country and the line is not directly adjacent to the Mayo Clinic, but is two to five blocks away.

can be found in the list of the Board's mitigation included in the Executive Summary.

- Numerous agreements negotiated between communities along the existing rail line and DM&E address the concerns of the local communities; and Rochester, Chester, and the other communities without negotiated agreements are free to develop their own voluntary agreements with DM&E.
- Cost—given the broad geographic scope of this 900-mile project (including both the new and existing line)—requiring DM&E to mitigate the thousands of sensitive noise receptors potentially affected by horn noise by means such as insulation, sound barriers, or air conditioning to reduce the need to open windows for ventilation would be very costly.
- Sound barriers, particularly on both sides of the rail line, would create potential safety hazards and might not be effective because numerous road crossings in Rochester and other communities at issue here would create openings in the barriers, which would allow sound to escape.
- In many locations, sound barriers would be constructed along the backyards of adjacent residences. These walls would create a significant, permanent visual component in these areas. Maintenance and potential vandalism (particularly graffiti) would create ongoing concerns and cost issues for DM&E, the community, and adjacent residents.
- Sound barriers would also create significant visual obstructions to motorists and locomotive engineers when approaching grade crossings, preventing motorists from seeing approaching trains and engineers from seeing traffic at grade crossings until nearly at the crossing, which could leave insufficient time for vehicles or trains to slow or stop to avoid collisions.

- Portions of an existing bike/walking trail in Rochester would likely have to be relocated onto private property adjacent to the rail right-of-way to avoid being located between sound barrier walls.
- The installation of grade crossing improvements and the grade separated crossings that would be required in Rochester and Pierre, under the Board's current mitigation, would reduce horn noise to some extent.
- As indicated in the EIS, because many of the noise sensitive receptor locations with substantial horn noise would also experience wayside noise levels of L_{dn} 70 dBA or higher, they would already benefit from the Board's noise mitigation.
- DM&E would not reach its full operational level of 100 million tons of annual coal transportation for several years after coal operations begin, and because several alternative interchange locations along DM&E's existing system would allow interchange of coal traffic with other carriers, even at the full 100-million-ton level, some communities, especially those further east, might never experience the full level of 37 trains per day and associated levels of noise, including horn noise, that could result from this project.
- The Board has already imposed significant mitigation beyond what the Board has imposed in any prior case (147 separate conditions estimated to cost as much as \$140 million, including 11 conditions addressing noise).

1.4.2 Noise and Vibration Synergies

SEA concluded in the EIS that the proposed project would have potentially significant impacts to noise sensitive receptors due to increases in noise from greater numbers of passing trains and locomotive horn soundings. Additionally, SEA concluded that the proposed project would not have significant effects on noise sensitive receptors due to increased vibration because projected vibration

levels would be insufficient to cause damage to nearby structures. Following its additional investigation and analysis of the noise and vibration synergies, in accordance with the court's decision in Mid States, SEA finds no evidence to conclude that, at the levels of vibration anticipated from the proposed project, any increase in the annoyance from, or perception of, noise would occur. As such, SEA finds no reason to modify its prior noise and vibration conclusions, or to recommend mitigation measures beyond those previously imposed by the Board to address these issues.

1.4.3 Air Emissions

SEA conducted, in response to the court's remand, an extensive investigation of the potential impacts of the proposed project on the potential increase in coal usage and associated air quality impacts that could result from lower transportation rates as a result of this project. After carefully assessing existing computer models that could be used for this analysis, SEA selected the Department of Energy, Energy Information Administration's "NEMS" model (National Energy Modeling System) as the most appropriate model. SEA then requested that EIA conduct a rate sensitivity analysis for SEA, using NEMS, and gave EIA staff the appropriate set of cases to run. EIA executed the necessary model runs and provided the results of its analysis to SEA in the form of a report that was included in the Draft SEIS at Appendix G.

Based on the evaluation using NEMS modeling, SEA determined that:

- Little additional coal would be consumed nationally or regionally if the DM&E PRB Expansion Project were built.
- On a national and regional level, projected air emissions for sulfur dioxide, nitrogen oxides, carbon dioxide, and mercury associated with the small increase of additional coal would be less than 1 percent.

- On a national and regional level, projected air emissions for carbon monoxide and particulate matter would also be small—less than 1 percent.
- The information SEA would need to meaningfully measure local air emissions is unavailable, due to a lack of specific information on where the additional coal would be burned.
- Given the minor increases in coal consumption and air emissions on a national and regional basis, and the lack of critical information needed to quantify impacts on a local basis, SEA did not recommend additional air quality mitigation beyond that already imposed by the Board.

None of the comments on the air emissions issue showed that a model other than NEMS would have been preferable; most merely requested clarification or further explanation of SEA's inputs and results of the rate sensitivity analysis or suggested that the 20-25 year modeling period in NEMS is not long enough. SEA responds to these comments in Chapter 4 of the Final SEIS, explaining that the commenters had failed to demonstrate either that the method SEA used to address the court's concerns was inappropriate; that the inputs used for the NEMS study were incorrect; or the results of the study were unreasonable; and that any modeling beyond 20-25 years would be speculative. Accordingly, the Final SEIS reaffirms the conclusions reached in the Draft SEIS and does not recommend additional air quality mitigation beyond that previously imposed by the Board.

1.4.4 Programmatic Agreement Governing Historic Review

SEA has developed an appropriate Programmatic Agreement for the proposed project,²⁷ which is responsive to the issues and concerns raised in this case regarding cultural and historic resources,

²⁷ Copy attached in Draft SEIS, Appendix D.

including those of Native American Tribes. The Programmatic Agreement provides an appropriate process for identifying and treating any cultural resources that may be affected by the proposed project. The Programmatic Agreement has been executed, thus satisfying the concerns of the court.

1.4.5 Other Issues

SEA has carefully considered comments suggesting that SEA analyze in the Final SEIS the effects of DM&E's recent acquisition of the IMRL rail lines. However, as explained in Chapter 6, below, the Board's decisions in the IMRL case (copies attached as Appendix B) case specifically prohibit DM&E from transporting coal from the PRB over the IMRL lines until completion of an appropriate environmental review. Accordingly, DM&E's purchase of these rail lines does not constitute a changed circumstance warranting additional environmental review in this SEIS.

Chapter 6 also explains that EPA's concerns regarding wetlands and wetland mitigation should be addressed as part of the Clean Water Act, Section 404 permitting process that will take place if this line is approved and built. The chapter further denies Olmsted County's request for an additional environmental justice evaluation, noting that SEA's environmental justice methodology was specifically affirmed by the court in Mid States. Finally, it finds meritless the commenters' request that the Board revise several mitigation conditions in the 2002 Decision that are linked to particular levels of annual coal transportation.

1.5 DISTRIBUTION AND AVAILABILITY OF THE FINAL SEIS

The Board has served the Final SEIS to all parties of record, key reviewing agencies and all those individuals and groups providing comments on the Draft SEIS. SEA has distributed the Final SEIS to over 90 local public libraries, and asked that the Final SEIS be made available in their reference section. Furthermore, the entire document is available on the Board's website (<http://www.stb.dot.gov>) under "Decisions & Notices," and listed as "Environmental Review" by Service Date (December 30, 2005), Docket Number (FD 33407), Docket Prefix (FD) or Decision ID Number 20743.

Additionally, SEA has mailed over 1,500 copies of the Executive Summary of this Final SEIS to the persons and entities on the environmental distribution list. The Executive Summary and accompanying cover letter announce the availability of the Final SEIS and provide information and instructions on how to access a copy of the entire document. In accordance with CEQ regulations, SEA has submitted the Final SEIS to the U.S. Environmental Protection Agency for issuance of a Notice of Availability.

1.6 NEXT STEPS

Issuance of this Final SEIS completes the Board's environmental review process. In accordance with the CEQ regulations implementing NEPA at 40 CFR 1506.10(b), no agency decision on the proposed action may be made until 30 days after EPA publishes its Notice of Availability of the Final SEIS. Congress has not established a statutory time frame within which the Board must issue its final decision, and the Board has not announced a date for issuance of the final decision. However, in the interest of bringing this matter to closure, the Board will act as promptly as possible.

In its final decision, the Board will assess the potential environmental impacts of the four remanded environmental issues, and the cost of any necessary additional mitigation to address those impacts. Then the Board will re-weigh the merits of the underlying proposal, to reflect those impacts and costs, and to impose appropriate additional or revised environmental mitigation conditions if it decides again to approve the project. The cooperating agencies will also issue decisions under their own governing statutes based on the EIS, SEIS, and various applications submitted by DM&E.

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